


**J. ROBERT WOOLEY, AS  
COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA**

NUMBER 499,737 SECTION 

**VERSUS**

**19<sup>TH</sup> JUDICIAL DISTRICT COURT**

**PARISH OF EAST BATON ROUGE**

**STATE OF LOUISIANA**

1500  
**THOMAS S. LUCKSINGER, MICHAEL D.  
NADLER, STEPHEN J. NAZARENUS, SCOTT  
WESTBROOK, MICHAEL K. JHIN, WILLIAM  
F. GALTNEY, JOHN P. MUDD, EXECUTIVE  
RISK INDEMNITY, INC., EXECUTIVE RISK  
MANAGEMENT ASSOCIATES, EXECUTIVE  
RISK SPECIALTY INSURANCE CO.,  
EXECUTIVE LIABILITY UNDERWRITERS  
AND GREENWICH INSURANCE CO.,  
AMCARECO, INC., AMCARE MANAGEMENT,  
INC.**

**STATE  
FILED**

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**PETITION**

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**NOW INTO COURT**, through undersigned counsel comes plaintiff J. Robert Wooley, Commissioner of Insurance for the State of Louisiana ("the Commissioner") in his capacity as Liquidator of AmCare Health Plans of Louisiana, Inc. ("AmCare"), a wholly owned subsidiary of AmCareCo, Inc. ("AmCareCo"), who respectfully represents that:

1.

Made defendants herein are the following:

- A. Thomas S. Lucksinger, an individual of full age of majority, domiciled in the State of Texas and upon information and belief, was doing business in the State of Louisiana as officer and/or director of AmCareCo, AmCare and/or AmCare Management Inc. ("AmCare Management");
- B. Michael D. Nadler, an individual of the full age of majority and upon information and belief, who is domiciled in the State of Texas and a resident of the State of Alabama, was doing business in the State of Louisiana as officer and/or director of AmCareCo, AmCare and/or AmCare Management;
- C. Stephen J. Nazarenius, an individual of the full age of majority, domiciled in the State of Texas and upon information and belief, was doing business in the State of Louisiana as officer and/or director of AmCareCo, AmCare and/or AmCare Management;
- D. Scott Westbrook, an individual of full age of majority, domiciled in the State of Louisiana and upon information and belief, was doing business in the State of Louisiana as officer and/or director of AmCare;
- E. Michael K. Jhin, an individual of full age of majority, domiciled in the State of Texas and upon information and belief, was doing business in the State of Louisiana as officer and/or director of AmCareCo, AmCare and/or AmCare Management;
- F. William F. Galtney, an individual of full age of majority, domiciled in the State of Texas and upon information and belief, was doing business in the State of Louisiana as officer and/or director of AmCareCo, AmCare

and/or AmCare Management;

- G. John P. Mudd, an individual of full age of majority, domiciled in the State of Florida and upon information and belief, was doing business in the State of Louisiana as officer and/or director of AmCareCo, AmCare and/or AmCare Management;
- H. Executive Risk Indemnity, Inc., a foreign insurer doing business in the State of Louisiana, who issued a Diversified Health Care Organization Directors and Officers Liability Insurance Policy Including Employment Practices Liability Coverage to its officers and directors of AmCareCo, AmCare and/or AmCare Management;
- I. Executive Risk Management Associates, a foreign entity, doing business in the State of Louisiana with Executive Risk Indemnity Inc., who issued a Diversified Health Care Organization Directors and Officers Liability Insurance Policy Including Employment Practices Liability Coverage and also doing business with Executive Risk Specialty Insurance Company, who issued a Managed Care Organization Policy to its officers and directors of AmCareCo, AmCare and/or AmCare Management;
- J. Executive Risk Specialty Insurance Company, a foreign insurer, doing business in the State of Louisiana, who issued a Managed Care Organization Errors and Omissions Liability Insurance Policy to its officers and directors of AmCareCo, AmCare and/or AmCare Management;
- K. Executive Liability Underwriters, a foreign entity and upon information and belief, was doing business in the State of Louisiana with Greenwich Insurance Company, who issued a Management Liability and Company Reimbursement Policy to its officers and directors of AmCareCo, AmCare and/or AmCare Management;
- L. Greenwich Insurance Company, a foreign insurer, doing business in the State of Louisiana, who issued a Management Liability and Company Reimbursement Policy to its officers and directors of AmCareCo, AmCare and/or AmCare Management;
- M. AmCareCo, a foreign business entity, doing business in the State of Louisiana, with officers and directors of AmCareCo, AmCare and/or AmCare Management; and
- N. AmCare Management Inc., a foreign business entity, doing business in the State of Louisiana, with officers and directors of AmCareCo, AmCare and/or AmCare Management.

2.

AmCareCo, Inc. is a Delaware corporation which has five subsidiaries, namely, AmCare Health Plans of Louisiana Inc., AmCare Health Plans of Texas, Inc., AmCare Health Plans of Oklahoma, Inc., HN Reinsurance Limited and AmCare Management, Inc.

3.

AmCare is a Louisiana health maintenance organization (the "HMO"), that was at all pertinent times authorized to do business in this Parish and State and a wholly owned subsidiary of AmCareCo.

4.

The HMO was a Louisiana corporation that held a health maintenance organization license from the Department of Insurance for the State of Louisiana and was therefore subject to the jurisdiction of the Commissioner and the Court pursuant to LSA-R.S. 22:1, LSA-R.S. 22:732, LSA-R.S. 22:732.1, LSA-R.S. 22:732.2, and LSA-R.S. 22:2001 et seq.

5.

All of the corporate subsidiaries stated herein were owned by AmCareCo and were managed by AmCare Management.

6.

The Commissioner determined that the minimum surplus requirement mandated by applicable Louisiana law was not maintained by the HMO and it was operating below the minimum surplus requirement which provided sufficient grounds to justify an order of rehabilitation under LSA-R.S. 22:733 and 734.

7.

The Commissioner further conducted an examination and review of the financial conditions of the HMO and found that it was financially troubled and had obligations and claims that exceeded the minimum financial requirements set by Statute which provided sufficient grounds to justify an Order of Liquidation under LSA-R.S. 22:734 and its applicable law.

8.

It was also determined that the current operations of the HMO endangered the interest of creditors, policyholders, subscribers, members, enrollees and the public.

9.

A permanent Order of Liquidation was issued against the HMO on November 12, 2002 by this Court.

10.

The Commissioner brings this action in his capacity as Liquidator of the HMO and in that capacity, is the real party at interest against officers and directors of the HMO for the errors and omissions that are enumerated herein.

11.

At all relevant times defendants Thomas S. Lucksinger, Michael D. Nadler, Stephen J. Nazareus, Scott Westbrook, Michael K. Jhin, William F. Galtney and John P. Mudd were officers and/or directors of AmCareCo, AmCare and AmCare Management.

12.

Executive Risk Incorporated is the Diversified Health Care Organization Directors and Officers Liability Insurer for claims arising out of the following non-exclusive listing of wrongful acts including but not limited to individuals acting in his or her capacity as an officer and/or director in committing actual acts, errors, omissions, misstatements, misleading statements or breach of duties in their capacities as an officer, director or member manager of the company, partnership, legal entity and breach of duties owed to the HMO, AmCareCo and AmCare Management.

13.

Executive Risk Specialty Insurance Company is the Managed Care Organization Errors and Omissions Liability Insurer for claims arising out of the following non-exclusive listing of wrongful acts including but not limited to individuals in his or her capacity as officer and/or director in committing actual or alleged acts, errors, omissions, in the performing or failing to perform the administrative or management duties owed to the HMO, AmCareCo and AmCare Management.

14.

Executive Risk Specialty Insurance Company is the Management Liability and Company Reimbursement Policy Insurer for claims arising out of the following non-exclusive listing of wrongful act including but not limited to individuals acting in his or her capacity as an officer and/or director in committing actual or alleged act, error, omission, misstatement, misleading statement or breach of duty and/or in any way involving any of the same or related facts, series of related facts, circumstances, situations, transactions or events, in the capacity as an officer, director or member manager of the company, partnership, legal entity and breach of duties owed to the HMO, AmCareCo and AmCare Management.

15.

Executive Risk Management Associates and Executive Liability Underwriters acted on behalf of the insurers in implementing policies of insurance to the HMO, AmCareCo and AmCare Management.

16.

AmCare Management, Inc., a foreign business entity, authorized to do and doing business in the State of Louisiana, which is a wholly owned subsidiary of AmCareCo, Inc. and which provided management services for AmCare and its parent company and affiliates but which company was placed in receivership in the State of Texas by order of the 200<sup>th</sup> Judicial District Court for Travis County, Texas, dated December 16, 2002, and entered an order staying all proceedings as to AmCare Management, Inc. and requiring the filing of a proof of claim with the receiver as to any and all claims asserted against AmCare Management, Inc., such as the claims herein.

17.

The wrongful acts identified at present, include, but are not limited to, the acts, omissions, errors, misstatements, misleading statements, and/or neglect, negligence or breach of duty by officers and directors of the HMO, AmCareCo and AmCare Management and/or the HMO, AmCareCo and AmCare Management for such acts, including, but not limited to entities identified as defendants contained herein for the following non-exclusive enumerated allegations.

18.

Defendants are indebted to plaintiff for such damages as are reasonable in the premises, together with legal interest from the date of judicial demand until paid in full, attorney's fees and for all cost of these proceedings and for all other equitable relief, for the following reasons.

19.

Defendants in their capacity as officers and directors of the HMO, AmCareCo and AmCare Management are indebted to the plaintiff for the following enumerated non-exclusive wrongful acts and errors and omissions in failing to perform the administrative or management duties owed to the HMO, AmCareCo and AmCare Management.

20.

The HMO, AmcareCo and AmCare Management and the board of directors of each and their respective officers and directors engaged in acts, errors, omissions, misstatements, misleading statements and breaches of duty ("Activities") designed to and which prevented the HMO from operating at the required capital and surplus levels mandated by Louisiana law.

21.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which caused the HMO to be non-compliant with the

minimum capital and surplus requirements under Louisiana insurance laws and an Order of the Commissioner.

22.

As a condition to the acquisition of the HMO by AmCareCo, the Commissioner ordered that the capital and surplus of the HMO shall at all times remain at a minimum of \$4,000,000.

23.

The HMO needed a surplus contribution of \$2,300,000 in order for it to be solvent and to comply with the Order.

24.

The previous owner of the HMO was Foundation Health Corporation ("FHC"), which was wholly owned at that time by Foundation Health Systems, Inc. ("FHS"), which is now known as Health Net, Inc.

25.

On March 9, 1999, FHS wired the needed \$2,300,000 to the HMO as a capital infusion so the HMO could meet the minimum statutory net worth requirements prior to the proposed acquisition.

26.

On April 30, 1999, the board of directors of the HMO approved a distribution of \$2,543,530 to FHC, who was the prior shareholder.

27.

Upon information and belief, the payment enumerated above was a reimbursement of a surplus contribution made by FHC on March 9, 1999, in the amount of \$2,300,000.

28.

On May 3, 1999, after a payment of \$2,543,530, the net worth of the HMO was \$458,232 based on prior year-end annual statement figures.

29.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which did not afford the HMO sufficient cash reserves for the on-going operations of the HMO.

30.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which diverted funds from the HMO as advances on management fees to AmCare Management.

31.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which incorrectly reflected amounts owed to the HMO from AmCare Management as admitted assets of the HMO, distorting the HMO's actual financial condition.

32.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which showed cash contributions from AmCareCo to the HMO when in fact no cash was received by the HMO.

33.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which did not adequately reflect reserves required for HMO claims.

34.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which depleted the assets of the HMO upon AmCareCo's acquisition of the HMO in April, 1999 and continued throughout the operation of the HMO by AmCareCo and AmCare Management.

35.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which neglected the duty to oversee the operations of the HMO.

36.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities in which the HMO made extraordinary capital distributions to AmCareCo when the HMO did not have the surplus or net income required to make such distributions.

37.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which caused the HMO to reflect balances due from AmCare Management over 90 days old as admitted assets of the HMO.

38.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which caused the HMO to fail in its obligation to have an independent auditor issue an annual audit report for the HMO for the years 2000 and 2001.

39.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which caused the HMO to inaccurately reflect the financial condition of the HMO on financial statements filed with the Louisiana Department of Insurance.

40.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities which caused the HMO to make payments to AmCareCo in violation of directives issued to the HMO by the Louisiana Department of Insurance.

41.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities and failed in their duty to manage and/or oversee the claims activities of the HMO.

42.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, engaged in Activities and failed in their duty to manage and/or oversee the operations of the HMO.

43.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, paid commissions to agents who were not appointed by the HMO.

44.

The officers and directors of the HMO, AmCareCo and AmCare Management paid claims later than 45 days which does not comply with Louisiana law.

45.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, failed to regularly conduct and document meetings which resulted in negligent corporate governance, during the policy coverage period or any extended reporting period.

46.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, mismanaged the claims adjudication process and the reporting and payment process resulting in an undeterminable claim liability of the HMO, during the policy coverage period or any extended reporting period.

47.

The officers and directors of the HMO, AmCareCo and AmCare Management and the board of directors of each, accumulated an unprocessed claims count in excess of 41,000 claims, which was discovered prior to the appointment of the Receiver.

48.

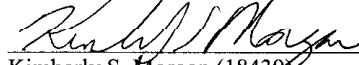
The above acts, as well as others that may be discovered, reflect the wrongful acts and mismanagement of the officers and directors of the HMO, AmCareCo and AmCare Management, in managing and/or overseeing the affairs, of the HMO, resulting in financial loss to the taxpayers of the State of Louisiana, to the HMO's policyholder, creditors and the general public.

49.

Amicable demand has been made, but to no avail.

**WHEREFORE**, J. Robert Wooley, Commissioner of Insurance for the State of Louisiana and Liquidator of the HMO, pray that this Honorable Court will grant judgment in favor of plaintiff and against defendants, Thomas S. Lucksinger, Michael D. Nadler, Stephen J. Nazareus, Scott Westbrook, John P. Mudd, Michael K. Jhin, William F. Galtney, John P. Mudd, Executive Risk Indemnity, Inc., Executive Risk Management Associates, Executive Risk Specialty Insurance Company, Executive Liability Underwriters, Greenwich Insurance Company, AmCareCo, Inc. and AmCare Management, Inc. with prejudice and for the cost of all legal interest from the date of judicial demand and for all legal orders and decrees necessary in obtaining all general and equitable relief.

Respectfully submitted,



Kimberly S. Morgan (18439)

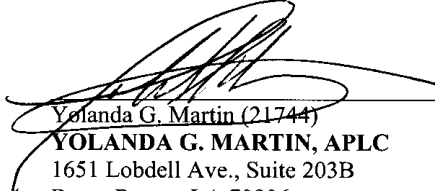
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ATTORNEYS FOR J. ROBERT WOOLEY,  
COMMISSIONER OF INSURANCE FOR THE  
STATE OF LOUISIANA

CERTIFIED TRUE COPY

026163

DEPUTY CLERK OF COURT

PLEASE SERVE:

Seal of the State of Louisiana  
702 Canal Street  
Baton Rouge, LA 70810

Greenwich Insurance Company  
Through It's Agent for Service of Process  
Walter Fox McKeithen  
3851 Essen Lane - State Archives Bldg.  
Baton Rouge, LA 70809

Executive Risk Indemnity, Inc.  
Through It's Agent for Service of Process  
Walter Fox McKeithen  
3851 Essen Lane - State Archives Bldg.  
Baton Rouge, LA 70809

Executive Risk Specialty Insurance Company  
Through It's Agent for Service of Process  
Walter Fox McKeithen  
3851 Essen Lane - State Archives Bldg.  
Baton Rouge, LA 70809

PLEASE SERVE VIA LONG ARM:

AmCareCo, Inc.  
3411 Richmond Ave.  
Suite 500  
Houston, TX 77046

**AmCareCo, Inc.**  
**Through It's Director**  
**John P. Mudd**  
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**Miami, FL 33175**

**AmCareCo, Inc.**  
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**Houston, TX 77007-3048**

**Thomas S. Lucksinger**  
**8800 Woodway Dr. Unit 12**  
**Houston, TX 77063**

**Thomas S. Lucksinger**  
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**Houston, TX 77043**

**Michael D. Nadler**  
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**Stephen J. Nazareus**  
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**John P. Mudd**  
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**Coral Gables, FL 33134**

**Michael K. Jhin**  
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**Houston, TX 77030**

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**Houston, TX 77024**

**Executive Liability Underwriters**  
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**Hartford, CT 06103**

**Executive Risk Management Associates**  
**P.O. Box 2002**  
**Simsbury, CT 06070-7683**

307030029000

J. ROBERT WOOLEY, AS  
COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA

NUMBER 499737 SECTION 15

VERSUS

19<sup>TH</sup> JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

THOMAS S. LUCKSINGER, MICHAEL D.  
NADLER, STEPHEN J. NAZARENUS, SCOTT  
WESTBROOK, MICHAEL K. JHIN, WILLIAM  
F. GALTNEY, JOHN P. MUDD, EXECUTIVE  
RISK INDEMNITY, INC., EXECUTIVE RISK  
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RISK SPECIALTY INSURANCE CO.,  
EXECUTIVE LIABILITY UNDERWRITERS  
AND GREENWICH INSURANCE CO.,  
AMCARECO, INC., AMCARE MANAGEMENT,  
INC.

STATE OF LOUISIANA

VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, duly commissioned and qualified within  
and for the State and Parish aforesaid personally came and appeared:

MARLON HARRISON

a person known by me, Notary Public, to be of lawful age and a resident of the Parish of Baton  
Rouge, Louisiana and who, after first being duly sworn by me, did depose and say:  
that he is the Court-appointed Receiver for AmCare Health Plans of Louisiana, Inc.,  
in the above captioned matter.  
That he has read the foregoing Petition and the allegations contained therein are true  
and correct to the best of his personal knowledge, information and belief.

19th JUDICIAL DISTRICT  
EAST BATON ROUGE PARISH, LA.  
FILED

2003 JUN 30 PM 2:32

DEPUTY CLERK & RECORDER FOR  
DOUG WELBORN  
CLERK OF COURT E.B.R. PARISH

  
MARLON HARRISON

SWORN TO AND SUBSCRIBED before me, this 30th day of  
June, 2003.

  
NOTARY PUBLIC

J. ROBERT WOOLEY, AS  
COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA

NUMBER 499 B7 SECTION 25

VERSUS

19<sup>TH</sup> JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

THOMAS S. LUCKSINGER, MICHAEL D.  
NADLER, STEPHEN J. NAZARENUS, SCOTT  
WESTBROOK, MICHAEL K. JHIN, WILLIAM  
F. GALTNEY, JOHN P. MUDD, EXECUTIVE  
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INC.

STATE OF LOUISIANA

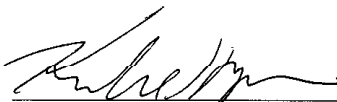
**REQUEST FOR NOTICE OF TRIAL  
AND OF SIGNING OF JUDGMENT AND ORDER**

TO: Clerk of Court, 19<sup>th</sup> Judicial District Court  
Parish of East Baton Rouge

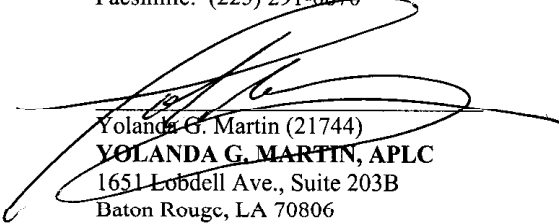
Pursuant to Article 1572 of the Louisiana Code of Civil Procedure, I hereby request written notice of the date set for trial of the above numbered entitled cause, and of the date set for trial of any pleadings or motions therein, at least ten (10) days before any trial date.

I also request written notice of the signing of any final judgment or of the rendition of any interlocutory Order of Judgment in said cause as provided by Articles 1913 and 1914 of the Louisiana Code of Civil Procedure.

Respectfully Submitted,




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19<sup>TH</sup> JUDICIAL DISTRICT  
COURT EAST BATON ROUGE PARISH, LA  
FILED

2003 JUN 30 PM 2:33

BY   
DEPUTY CLERK & RECORDER FOR  
**DOUG WELBORN**  
CLERK OF COURT E.B.R. PARISH

CERTIFIED TRUE COPY

026165

DEPUTY CLERK OF COURT

ATTORNEYS FOR J. ROBERT WOOLEY,  
COMMISSIONER OF INSURANCE FOR THE  
STATE OF LOUISIANA